

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

UNITED STATES OF AMERICA : Criminal Action No.
v.

RACHEL ONDRIK, : PJM 13-328
Defendant.

UNITED STATES OF AMERICA, :
v.

: PJM 13-327
KIRK YAMATANI, : Greenbelt, Maryland
Defendant. : June 30, 2014
10:05 A.M.

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: ADAM KENNETH AKE, Esquire
Office of the United States Attorney
6500 Cherrywood Lane, Suite 400
Greenbelt, Maryland 20770
301-344-4433

FOR THE DEFENDANT ANDREW C. WHITE, Esquire
RACHEL ONDRIK: Silverman Thompson Slutkin and White LLC
201 N Charles Street, Suite 2600
Baltimore, MD 21201
410-385-2225

FOR THE DEFENDANT STEVEN HALE LEVIN, Esquire
KIRK YAMATANI: Levin and Curlett LLC
201 N. Charles Street, Suite 2000
Baltimore, Maryland 21201
410-685-4444

OFFICIAL COURT REPORTER: LINDA C. MARSHALL, (301) 344-3229
COMPUTER-AIDED TRANSCRIPTION OF STENOGRAPHY NOTES

P-R-O-C-E-E-D-I-N-G-S

THE DEPUTY CLERK: The matters now pending before this Court are Criminal Action Numbers PJM 13-0327, the United States of America versus Rachel Ondrik; and PJM 13-0238, United States of America versus Kirk Yamatani. The matter is now before this Court for sentencing.

THE COURT: All right. Counsel, identify yourselves first for the government and then for Ms. Ondrik, and then Mr. Yamatani.

MR. AKE: Good morning, Your Honor. Adam Ake for the United States. I'm joined at counsel table by our Attorney/Investigator, Mona Haar from the Department of Commerce OIG.

MR. WHITE: Good morning, Judge. Andrew White on behalf of Rachel Ondrik who is standing to my left.

MR. LEVIN: Good morning, Your Honor. Stephen Levin on behalf of Mr. Yamatani, who is seated to my left.

THE COURT: All right. Issues with the Presentence Report?

MR. AKE: None, Your Honor.

MR. WHITE: None, Your Honor.

MR. LEVIN: None, Your Honor.

THE COURT: In the Ondrik case, the Court adopts the factual findings and advisory guideline application in the Presentence Report without change. The total offense level is

1 eight. The criminal history category is one. The custody range
2 is 0-6 months. The supervised release range and the probation
3 range is not more than five years -- I'm sorry, at least, one
4 year not, more than five years. The fine range is 1,000 to
5 \$10,000. And the --

6 Is the agreed restitution \$9,598.66?

7 MR. AKE: Yes, Your Honor.

8 MR. WHITE: Yes, sir, Judge.

9 THE COURT: Okay. In the Yamatani case, the Court
10 also adopts the factual findings and advisory guideline
11 application in the Presentence Investigation Report without
12 change. The total offense level for this is 10. The criminal
13 history category is one. The custody range 6-12 months;
14 supervised probation again, also, 1-5 years.

15 We have a fine range of 2,000 to \$20,000 and the
16 restitution amount, I think, is higher, \$11,150.21, Mr. Levin?

17 MR. LEVIN: Yes, Your Honor.

18 THE COURT: All right. Mr. Ake, I don't know how you
19 want to proceed on this. Do you want to talk about both
20 defendants at the same time?

21 MR. AKE: Yes, Your Honor. The government's
22 recommendation in both cases was the same. Your Honor, in this
23 case the -- with the minor exception of the, comparing the
24 restitution amount for each defendant, the government is
25 recommending that both defendants be sentenced to time served

1 essentially. Both of the cases were 6 days imprisonment, 80
2 days in home detention. And then a \$20,000 agreed fine. Both
3 parties are recommending the restitution amount for each
4 respective defendant.

5 THE COURT: Have the 80 days been served as well or
6 are you trying to count back from the time that they were on
7 pre-release or are you talking about respectively?

8 MR. AKE: No, Your Honor. This is already served home
9 detention. It was served last summer in between the -- they
10 were released from -- I believe they were both in Northern Neck.
11 I believe Northern Neck, and the time that they withdrew their
12 pleas. So there was an 80 day period that they were on home
13 detention.

14 THE COURT: What was that, a condition of pre-release
15 or was that part of a sentence? I'm not --

16 MR. AKE: No, this was a condition of pre-trial
17 release. It was certainly a condition of pre-trial release,
18 Your Honor.

19 THE COURT: Well, you want to give them credit for
20 home detention while on pre-release?

21 MR. AKE: Essentially, Your Honor. It would be, not
22 --

23 THE COURT: That's not time served though?

24 MR. AKE: Correct.

25 THE COURT: Wait. Wait a minute.

1 MR. AKE: Yes, Your Honor.

2 THE COURT: Home detention on pre-release is not part
3 of a sentence. It's a condition of pre-release.

4 MR. AKE: Yes, Your Honor.

5 THE COURT: So when you say time served, if I give
6 them further home confinement. They don't get credit for home
7 confinement that they have served?

8 MR. AKE: Yes, Your Honor.

9 THE COURT: Now, I understand that there were six days
10 of custody.

11 MR. AKE: Yes, Your Honor.

12 THE COURT: All right. Well, let's be clear about
13 that.

14 MR. AKE: Okay, Your Honor.

15 THE COURT: Now, you're not recommending home
16 confinement then?

17 MR. AKE: No, Your Honor. No additional confinement,
18 just to be -- I wanted to let the Court know that they had
19 served that period while on pre-trial confinement.

20 THE COURT: But a lot of defendants do and they don't
21 get credit toward the sentence for a condition of pre-release,
22 so that you're clear about that.

23 MR. AKE: Yes, Your Honor.

24 THE COURT: All right. Go ahead.

25 MR. AKE: So, Your Honor, the government's under the

1 impression and I believe the defendants will confirm that
2 they're in a position to satisfy the financial aspects of any
3 sentence that the Court imposes today. So as long as that is
4 done, the government does not recommend any additional periods
5 of supervised release, other than the -- I mean, beyond the time
6 served sentence that the government is recommending.

7 THE COURT: Well, again -- now, wait a minute. Are
8 you recommending probation or are you recommending a condition
9 with supervised release?

10 MR. AKE: Your Honor, I'm just recommending that
11 they -- the sentence the Court imposes be the 6 days
12 imprisonment, time served with no additional period of
13 supervised release.

14 THE COURT: Mr. Mebane, let me just check with you on
15 that now. The six days that are served, does that then require
16 a sentence that is not probationary?

17 MR. MEBANE: Well, I mean --

18 THE COURT: I kind of thought the government was
19 recommending probation or just no supervised release. If I want
20 to put a condition in here, how would I do it, if I want to add
21 a term of supervision?

22 MR. MEBANE: It has to be a supervised release,
23 Your Honor.

24 THE COURT: It has to be a supervised release --

25 MR. MEBANE: -- if they receive a term of

1 imprisonment.

2 THE COURT: And it would be time served, according to
3 the government's recommendation. All right, just so we're
4 clear.

5 MR. AKE: Yes, Your Honor. Your Honor, the Court can
6 make up to one year supervised release in this case.

7 THE COURT: Can or can make more?

8 MR. AKE: Can only, Your Honor. This is a -- let's
9 see here, a Class "A" misdemeanor.

10 THE COURT: Let me ask you, has either defendant made
11 payment toward restitution so far?

12 MR. AKE: Your Honor, I believe they're prepared in
13 both cases to make the full amount of restitution.

14 THE COURT: Have they made any payment so far, was my
15 question?

16 MR. AKE: There was no vehicle where they could do so,
17 Your Honor. At least, since their appeal and the conviction was
18 vacated or they withdrew their pleas, there would be no way the
19 clerk's office would take the payment.

20 THE COURT: All right. Well, let's be clear. The
21 earlier sentence was vacated. That Order was entered to that
22 effect. There was a new plea agreement which the Court
23 accepted, so there should be no mistaking about where we are on
24 this.

25 MR. AKE: Yes, Your Honor.

1 THE COURT: All right. So your recommendation is
2 summing up, go ahead, again for both.

3 MR. AKE: Yes, Your Honor. So it would be a sentence
4 of imprisonment with time served, six days; a fine of \$20,000
5 restitution in the respective amount for Mr. Yamatani was
6 \$11,150; in the case of Ms. Ondrik, \$9,598. And the government
7 is not seeking any additional period of supervised release as
8 long as they satisfy the financial aspects of the judgment
9 immediately.

10 THE COURT: Is the proposition that they would make a
11 single payment as to the fine, an immediate payment as to the
12 fine or a payment over time? What about the restitution?

13 MR. AKE: I believe both defendants on a -- I'm just
14 getting nodding heads from the defense attorneys here, but I
15 believe both defendants have moved money around, cashed out
16 retirement savings and put it in checking, so that they're both
17 in a position to write checks today.

18 THE COURT: That's both amounts, for the fine and the
19 restitution?

20 MR. AKE: Yes, sir.

21 THE COURT: All amounts?

22 MR. AKE: And, Your Honor, just in terms of going
23 through the 3553 factors, I -- the government does fully believe
24 that this is a serious offense and, frankly, we would not have
25 brought it, pursued it as doggedly as we did if we didn't think

1 it was a serious offense.

2 But in this case, the need for additional deterrence
3 for these defendants, I believe, is minimal. I believe that
4 their cases and their a signal value to their cases does support
5 general deterrence, even with the disposition the government
6 recommends.

7 I don't believe that additional jail time is going to
8 be productive for either defendant and I don't believe that that
9 is necessary to satisfy the government's interest in vindicating
10 or, at least, fully addressing the conduct that these defendants
11 exhibited.

12 THE COURT: Well, Mr. -- one of the concerns in this
13 case -- and I know I accepted the plea, but you talked about
14 this matter about being serious, but you took a plea on just a
15 3-day false statement, whereas, the facts go way beyond that.

16 The facts show multiple dates of false claims over a
17 2-year period. So when you say the government takes this
18 seriously and pursues it, perhaps, you'd like to say just why
19 that is that you don't take it as serious enough to pursue more
20 than you've pursued in this case.

21 MR. AKE: Sir, Your Honor, I think the collateral
22 consequence for the defendants in this case, even though it's a
23 misdemeanor conviction, it's -- the government was able to get
24 them to withdraw from government service and remove them,
25 essentially, from any ability to do federal law enforcement.

1 They're not going to be able to obtain law enforcement jobs in
2 the future. As I said, it's significant in that --

3 THE COURT: Is that a condition of --

4 MR. AKE: No. I think it's just a practical
5 repercussion of --

6 THE COURT: Well, aren't people who typically are
7 involved in embezzlement like this, don't they usually, don't
8 they lose their job usually? Was there something unique about
9 this that they would stay on in the face of -- as extensive
10 record as this? You're arguing that that's somehow unique.

11 MR. AKE: Well, Your Honor, I can only speak to the
12 facts of this case.

13 THE COURT: Go ahead.

14 MR. AKE: Again, I'm sure that the defense counsel
15 will be able to articulate the impact that these convictions
16 have on both of their clients' lives, but from the government's
17 perspective, Your Honor, this is an appropriate resolution of
18 the case in terms of what we've recommended.

19 THE COURT: Well, are you saying that the Court is
20 unable to consider the fact that there were multiple days over a
21 two-year period when both people, both defendants submitted
22 false claims?

23 MR. AKE: Your Honor, that is why it was included in
24 the Statement of Facts that they agreed to. I mean, it's
25 typical that we let them plead to one particular offense and, of

1 course, everything is relevant conduct, Your Honor.

2 THE COURT: All right.

3 MR. AKE: But again, overall, Your Honor, it's the
4 government's position that the recommended sentence is
5 sufficient, but not greater than necessary to achieve the ends
6 of sentencing.

7 THE COURT: All right.

8 Mr. White, you want to start?

9 MR. WHITE: Thank you, Judge.

10 With respect to your concerns, Your Honor, about the
11 restitution, there wasn't a Restitution Order before to make the
12 payments, but I do want to say --

13 THE COURT: No, I understand. That's been clarified.

14 MR. WHITE: But just, but just because it's a good
15 point for us is that they both offered through counsel
16 previously to have it taken out of the money when they separated
17 and the government declined. So they could have been --
18 essentially, they wanted to have them done because they pay
19 taxes on it.

20 And so, instead of getting all these paid in full,
21 they were just going to -- counsel, Mr. Ake is correct, this is
22 all because they had cash in their retirement.

23 THE COURT: All right.

24 MR. WHITE: You know, did I understand what you were
25 saying in respect to the, you know -- it is a serious offense,

1 but all the days listed here that are in the facts that we
2 agreed to, it's not like it's ever -- a full day or a day.
3 These are hours of days, big amounts and small amounts, but that
4 time, Judge, when both of these agents are getting tremendous
5 accolades, doing their jobs beautifully.

6 And there's one correction I need to make in the
7 Sentencing Memorandum that Mr. Mebane did. And that is that
8 Ms. Ondrik was not -- she did not get an Agent of the Quarter
9 Award, I said in 2011. She was nominated by her supervisors for
10 it, but it was my mistake, but she was nominated for Agent of
11 the Quarter in 2011.

12 But both of them -- and we submitted the Performance
13 Reviews and the accolades with the Sentencing Memorandum,
14 including a letter from the Southern District of New York
15 involving a big case talking about how much time they've put in.

16 THE COURT: I saw that.

17 MR. WHITE: And those, as we all know from our
18 professions, with both of us being on both sides of the aisle
19 here, those letters don't grow on trees. And I would
20 respectfully submit to you, Judge, these are -- it's a
21 tremendously -- tremendous honor to have that, but it shows that
22 the fall from grace that both, that both agents have -- or both
23 clients have experienced it.

24 Because you've got two tremendously, talented people.
25 You've got one who is a mom and one is a great dad. This is the

1 way, sort of, we see it, like, in my world. And I wish there
2 was a better vehicle for the court system to sit down and say,
3 well, who are you really and take a look at, at beyond -- take a
4 look at their lives.

5 I mean, I tried to do that in the Sentencing
6 Memorandum, to show the Court what they do because they're both
7 tremendously good people. They're good family members. They're
8 good members of their family. They're great neighbors to their
9 friends in the neighborhood, but they're also both tremendously
10 educated people.

11 Ms. Ondrik graduated Phi Beta Kappa from Lehigh and
12 went on to get her Master's at the University of Delaware. And
13 while there, the school nominated her for the Presidential
14 Management Fellows Program.

15 And just to get the nomination is difficult, but then
16 you have to go through a gigantic rigorous process to get
17 accepted and that's what happened. And she went in with a
18 Master's Degree, Phi Beta Kappa and went into government
19 service.

20 Despite the hours of these days that total up to a few
21 thousand dollars, they had tremendously great careers, both of
22 them. They've also raised tremendously wonderful families.
23 They both have two young children who are extremely impacted by
24 this.

25 And Mr. Ake did mention -- and I really commend him

1 for, sort of, getting the bigger picture by mentioning the 80
2 days or so of, I call it, home lockdown. It went way beyond
3 home confinement. It didn't have the standard conditions of
4 home confinement where you can get out to go, sort of, get a
5 time out to go see some people. They had complete lockdown.

6 But it did make an impact tremendously on their
7 families. Deputy Sheriff Ondrik will testify what it did to
8 their family over last summer. But there's a punitive aspect to
9 that, Judge, that I respectfully suggest that you should take
10 into account, because both have done six years -- or six days in
11 a difficult situation on lockdown because of their status as
12 agents, along with 80 days, basically, of home, complete home
13 lockdown.

14 Both of them had to raid their retirement accounts.
15 They've lost their -- they've lost tremendously and they've
16 lost --

17 Mr. Yamatani had almost 15 years. I know that my
18 client, Ms. Ondrik, had another 11 or 12, and that's all lost.
19 So you don't have the financial stability of a pension down the
20 road. They've had to raid their pensions to make a payment, to
21 pay this, so that's a gigantic loss.

22 Judge, Brian and Rachel Ondrik are two wonderful
23 parents. They, they're teaching their kids the right way.
24 They're teaching them about volunteering. As we mentioned in
25 our memorandum, they both volunteer at a, at a rescue horse

1 stable in Maryland. They both are taught respect for life.
2 They both have respect for others and giving back. I know this
3 weekend that they -- they've told me earlier today that this
4 weekend they're going to spend -- instead of being out for the
5 holidays, they're going to be building fences, preparing fences
6 out at the stable.

7 So all volunteer work and it's all, it's all because
8 they love helping animals and helping other kids who end up
9 getting -- benefiting from the association with the rescue, with
10 rescue animals.

11 I know that Mr. Yamatani and his wife both, they have
12 two wonderful kids, nine and eight, Judge. He serves as a
13 backpack buddy, helping out impoverished youth. They both
14 volunteer time at their church, St. Yves [sic] in Ashburn,
15 Virginia. And they both help out annually at the Christian
16 Children's Fund where they help to support kids in other
17 countries.

18 So, Judge, you're faced here with two tremendously
19 good citizens who've made some really disastrous and stupid
20 decisions between two and four years ago that resulted in
21 several thousand dollars of loss to the government.

22 I think it was -- I broke it down, but I think that
23 there's a qualitative difference in the loss figures. Because I
24 think 40 percent of Ms. Ondrik's loss or \$3856; and 28 percent
25 of Mr. Yamatani's loss was not due to the false statements,

1 Judge, in the traditional sense, but they were due -- they were
2 barred from federal service back two years ago now, over two
3 years ago. They were barred from federal service. They could
4 not go on to -- on to any federal buildings and they were on
5 administrative leave and did not have to do any work, but they
6 went outside the geographic area, which technically, I guess,
7 puts them in a position where they're -- they shouldn't be --
8 they either had to take leave or -- they have to take leave and
9 didn't.

10 So the two loss numbers on the, on the claims, it's
11 about five, 5700 for Ms. Ondrik and it's about 8400 for
12 Mr. Yamatani. And it's, you know, serious but they're not the
13 biggest numbers in the world, not the biggest numbers that you
14 typically see here in the U.S. District Court.

15 Judge, I respectfully would beg the Court to go along
16 with the reasonable judgment of the United States in this case
17 and the joint recommendation of the parties of time served. It
18 was six difficult days followed by 80 difficult days, but they
19 did have six days of jail. And, basically, the difficult
20 lockups in Northern Neck and Howard County as well.

21 But both people, both defendants, Judge, have moved
22 on. Mr. Yamatani has a job with REICO. He's doing very well.
23 He was promoted to a manager level.

24 Judge, one thing, paragraph 53 of the PSR for
25 Ms. Ondrik stated that her employer was unaware of this offense.

1 That's the one thing I did want to mention and I did mention
2 that in my submission to the Court. Her employer is aware. In
3 fact, he's here in the courtroom. This is Ed Blansitt, who is
4 the Inspector General for Montgomery County and used to be the
5 Deputy Representative at the Department of Commerce. He's very
6 well aware. He's right here in the courtroom, Judge.

7 He actually sought out Ms. Ondrik after this all went
8 down and asked her to help, to join him and help out in his
9 unit. So, he knows a whole lot about her and knows about the
10 case, and I think it speaks volumes about the type of person
11 that she is that she would be sought out by the current IG of
12 Montgomery County for employment.

13 But both of them have moved on. Both of them are
14 doing a great job raising their kids. They've both contributed
15 to the community. I think the letters for both are substantial
16 and show that they are great members of the community.

17 In that regard, Judge, I believe that the deterrence,
18 specific deterrence is nil. They're not going to commit any
19 offenses again. That, I'm sure of. The general deterrence, as
20 Mr. Ake pointed out, given the circumstances of the case; the
21 doubling of the fine, the loss of employment, the loss of job
22 and pension, that stability, I think, is a tremendous general
23 deterrent to others as well.

24 Judge, for those reasons, I believe that the carefully
25 long-negotiated Plea Agreement with the government is

1 reasonable. I think it's fair. I think it satisfies all of the
2 factors under 3553, and I believe that a sentence of six days,
3 time served, plus the appropriate fine of \$20,000 for each, plus
4 restitution amounts, which will be paid in full today, is a
5 reasonable sentence in this case.

6 THE COURT: All right. Thank you, Mr. White.
7 Mr. Levin.

8 MR. LEVIN: Thank you, Your Honor. I believe
9 Mr. White spoke for both of us in his remarks.

10 Judge, I know Mr. Ondrik wanted to say a couple of
11 words to the Court.

12 THE COURT: No, I understand. I just wanted to make
13 sure we have articulation by counsel first.

14 You have nothing to add?

15 MR. LEVIN: No, Your Honor.

16 MR. WHITE: Judge, can I bring up Mr. Ondrik?

17 THE COURT: You can do it -- you said that Mr. Ondrik
18 wants to be heard from?

19 MR. WHITE: Yes, just momentarily. Just for the
20 record, this is Deputy Sheriff Brian Ondrik of the Arlington
21 County Sheriff's Department.

22 THE COURT: Bring him up to the podium.

23 State your name if you would and your relation to the
24 defendant.

25 MR. ONDRIK: My name is Brian Ondrik. Brian Ondrik,

1 Your Honor.

2 THE COURT: Your relation to Ms. Ondrik?

3 MR. ONDRIK: She's my wife.

4 THE COURT: All right.

5 MR. ONDRIK: The situation has been very stressful on
6 us. And I support and love my wife through this whole
7 situation, and I will continue to support her through this. I
8 just want to put this behind us and, you know, work through this
9 so we can just, you know, get our lives back together -- excuse
10 me.

11 And we are a great family. You know, we do so much
12 together and it's just, the whole situation has been stressful
13 and I just want -- like I said, I support and love her, and I
14 just want to put this behind us.

15 Thank you, Your Honor.

16 THE COURT: All right. Thank you, sir.

17 All right. Anything more for Ms. Ondrik, Mr. White?

18 MR. WHITE: I'm sorry, Your Honor.

19 THE COURT: Anything more for Ms. Ondrik? Do you have
20 other witnesses?

21 MR. WHITE: No, Judge.

22 THE COURT: Ms. Ondrik, would you like to say anything
23 to the Court before I impose sentence?

24 MR. WHITE: Judge, would you like her to stand here or
25 go to the podium, Your Honor?

1 THE COURT: Either way. If it's easier at the podium,
2 you can go there. Just put the microphone so I can hear. Put
3 the microphone in front of her.

4 MR. WHITE: Judge, this is Rachel Ondrik.

5 THE COURT: All right. Ms. Ondrik, I'll hear from
6 you.

7 THE DEFENDANT: I would like to say, I am sorry. I am
8 sorry to the federal government and I'm sorry to my family. I
9 have embarrassed them and I've been so lucky to have a husband
10 and an entire family to stand behind me. And I guarantee I will
11 never be in a courtroom again under these circumstances. I made
12 very bad decisions and I am sorry.

13 THE COURT: Mr. Yamatani, you have an opportunity as
14 well to address the Court.

15 THE DEFENDANT: Thank you, Your Honor. I too am
16 terribly sorry. I caused a lot of, caused a lot of pain and
17 suffering to my children, my wife and my family. I really
18 regret getting in this situation. I take full accountability
19 and I promise you, I will never, ever again find myself anywhere
20 near this kind of situation. I am, I am really sorry.

21 Thank you very much.

22 THE COURT: All right. Thank you, sir.

23 You do understand that the sentencing guidelines are
24 are, clearly, quite artificial in this case in terms of the
25 disparities between the two defendants. I think that the idea

1 that they should be sentenced in the same fashion makes good
2 sense. And so you have this recommendation in this case -- or
3 rather, the recommendation in the sense of where the sentencing
4 guidelines are of, essentially, something like zero to six
5 months. Although, as I indicated for Mr. Yamatani, it's more
6 because of a bump-up in the amount of money that's involved.

7 So it really, I think, is worth talking about the
8 statutory factors that the Court takes into account in imposing
9 a sentence under United States Code 3553. And the first is the
10 nature and circumstances of the offense.

11 Now, this was an offense where the government was
12 basically defrauded. That's what this case is about. And the
13 plea in this case was to one segment of a fraud that went on for
14 two years. And there were multiple occasions, whether it's part
15 of the day or a full day where claims were made that simply were
16 not justified. That's the reality of what happened here.

17 So let's not ignore that. Let's not really think
18 about the fact that simply because the government agreed to a
19 specific prosecution for just a narrow window, if you will, that
20 there wasn't a larger fraud over a longer period of time. We
21 write history in the courtroom and both defendants need to
22 understand that's where we are.

23 Is this serious? Is it serious that government
24 officials who are responsible for integrity in the government,
25 including monitoring fraud themselves, commit fraud. Of course

1 it is. Fraud against the government, in and of itself, whether
2 they enjoy, whether one enjoys the position of confidence and
3 fiduciary responsibility is serious enough when you are in fact
4 someone who is charged with, as they say, monitoring the hen
5 house. You can't start abusing the chickens.

6 And that's what gives me a problem with regard to the
7 background of both defendants, who obviously are highly
8 qualified, well regarded by friends and family, good parents
9 involved in many different ways. I suspect that's what gave
10 Judge Day some real concern in this case too, that this simply
11 was a situation where the defendants were permitted to, in
12 effect, pay back in money what they, what they -- for the
13 offenses that they committed and, basically, walk away from the
14 transaction after that.

15 Now, let's talk about walking away from the
16 transaction after that. One of the things that, in my view,
17 informs this case is that I think the defendants, perhaps their
18 families are shocked by the fact that they are in the criminal
19 justice system and somehow that they might have to face time in
20 jail or other penalties beyond restitution and fines.

21 But you know, it happens every day. And counsel knows
22 that very well, that people come before the Court day in and day
23 out who have committed these kinds of crimes and almost
24 automatically, almost invariably where someone abuses their job,
25 they lose their job. So there's nothing in this case, from my

1 standpoint, that simply says, because you've lost your job,
2 you've suffered enough and I need to make that clear.

3 Now, I'm trying to deal with defendants in this case
4 the way I would deal with other people. This is not a case that
5 merits eight months in jail. Let's start with that. That was
6 way out of proportion, in my view, to what this crime was about.

7 But when we walk through carefully, this case -- let's
8 be clear about how the defendant's actions relate to how other
9 people are treated in the system. People who commit fraud
10 against their employers, particularly, if it's continuous over a
11 period of time almost invariably lose their job and they suffer
12 in consequence. And their families suffer in consequence and
13 it's unfortunate, but that's not really a punishment.

14 The fact that cases take time to come to decision
15 means that the agony of waiting for a sentence is longer. But
16 that in and of itself is not a punishment because that happens
17 all the time.

18 To a certain extent, the defendants were resistant, as
19 I recollect, in owning up to what had happened here. But in any
20 event, once the system got in play and there was a prosecution,
21 there was the interlude there with the earlier sentence, which
22 the Court had to undue.

23 But in any event, that itself is not the punishment
24 because time passes between the offense and the sentence. I
25 need to make that clear too, because that happens in every case

1 virtually. Rarely does a case immediately get sentenced from a
2 plea. Sometimes it does, but the idea that there's a time delay
3 between the offense and the sentence is not itself a sentence.

4 You've heard my dialogue with the government about
5 home confinement. Home confinement often is a condition of
6 pre-release before sentence and home confinement is not --
7 there's no automatic entitlement to credit for a sentence
8 because you've served home confinement.

9 Now, Mr. White said that it was more stringent than
10 many home confinements are. I'm not sure why that would have
11 been, but as a practical situation, if I'm going to treat the
12 defendants like every other defendant and not give them special
13 credit for their backgrounds, home confinement really is not
14 part of the sentence. So I need to keep that in mind too.

15 I want to treat, first of all, the defendants as much
16 like other defendants as I can, but there is an added aspect of
17 this. And that has to do with the nature of the, the background
18 of the defendants.

19 Now, the thing that gives me real pause here and I
20 suspect again, as I said, Judge Day was that the defendants in
21 this case were responsible for, basically, ferreting out fraud
22 in government and they committed fraud themselves. Again, we
23 write history here and let's be very clear about what happened.

24 It's not like you're just somebody in government who
25 defrauded the government, who was a clerk who had access to

1 distributing funds. You were supposed to be monitoring fraud
2 and you committed it yourself. And that's the kind of thing
3 where the public has a right to be concerned. I need to say
4 that as well.

5 I mean, I speak for the community when I speak, when I
6 look at this case. Now, eight months is, of course, beyond
7 reason, in my view, but let's be very clear about where we are
8 and why there is, it seems to me, some concern about the nature
9 of what the defendants did. Again, we're talking about a
10 two-year period with multiple occasions, not just two or three
11 days. So let's be understood.

12 I do need to deter that. I think the community does,
13 so other people who are similarly placed in government with
14 responsibility as a fiduciary, as you all were, both of you
15 were, that you can't do this. You can't simply get involved in
16 this and expect by paying a fine and restitution. And then,
17 incidentally, losing your job as everyone else does and having
18 to do whatever and that's the end of it.

19 Of course, it's not the end of it. You pay a price
20 for it, having been convicted of this. So I congratulate you on
21 both of you being able to get a job where people have trust in
22 you now. That's really the mark, the sad mark here of what
23 happened here because it's never clear entirely, although I
24 don't think it's highly unlikely in this case that they some
25 other time, there'll be some other misstep.

1 I hope not. I don't think so, but that's always a
2 problem at this stage, you're not young people, at this stage
3 that acted as you did. So I need to sort these things out.

4 All right. Folks, here's my sentence in both cases
5 and I don't think it's all onerous, but it does take into
6 account what I think is needed. I'm going to sentence you both
7 to six days in custody, credit for time served.

8 I'm going to put you on supervised release for a year
9 and this is why. I'm going to order that each of you perform 60
10 hours of community service, wholly apart from what you're doing
11 now. That 60 days of extra service, it seems to me, says that
12 you have some obligation to the community to pay back.

13 I'm not going to put you on home confinement. It's
14 something you can do over weekends. You can do that within a
15 year. If you do it sooner, perhaps, we can terminate supervised
16 release sooner, but that's not very onerous. It's six hours a
17 day, maybe on a Saturday. It's ten weekends over the year, but
18 I want you to do that. I want you to be out there and do that.
19 And I want to make this condition, and I want this --

20 Mr. Mebane, I want this also clear. They are not to
21 do it with a program that they're already involved in. I want
22 you to select an independent program where there really is a
23 need for someone who is intelligent and dedicated, but you can
24 go about your other business, programs that you're already
25 involved in. But I'm not going to allow that you take the time

1 that you're ordinarily and familiar with spending on your own
2 and count that towards the 60 days. That is not, in my view,
3 appropriate under the circumstances.

4 There may be other ways in which probation understands
5 that you can make a significant contribution and that's the way
6 that you will do it.

7 Then I will agree with the fine and restitution
8 components that you are talking about in both cases. A \$20,000
9 fine, restitution in the case of Ms. Ondrik in the amount of
10 \$9,998.66. And in the case of Mr. Yamatani, in the amount of
11 \$11,150, both payable immediately as you have worked out, I
12 guess.

13 Is that something you're talking about today or 30
14 days, in a week or what?

15 MR. AKE: Your Honor, if you want to put a one-week
16 deadline on it, but I think both are prepared to do it today.

17 THE COURT: All right. Well, we'll give you a
18 one-week deadline to do that. There's also a \$25 special
19 assessment due and payable at this time.

20 Now, I think there was a, there wasn't a reservation
21 right of appeal, I think, under the circumstances; am I correct
22 with that?

23 MR. WHITE: I think, yeah, there was.

24 THE COURT: Had to do with the guideline range.

25 MR. WHITE: I think there's a fairly substantial

1 Waiver of Appeal in this case that would apply.

2 THE COURT: All right. With that, is there any other
3 comments to be made from the government, Mr. Ake?

4 MR. AKE: Your Honor, I think to the extent that I
5 didn't already withdraw it at this point, I would move to
6 dismiss those -- the original information we filed before
7 Judge Day. I'd ask those be dismissed as to both defendants?

8 THE COURT: Mr. White, anything further?

9 MR. WHITE: Nothing further, Your Honor.

10 MR. LEVIN: Your Honor, I may have misheard and I
11 apologize, but I thought at one point Your Honor said 160 days?

12 THE COURT: Sixty hours, not 60 days; 60 hours if I
13 misspoke.

14 Anything else?

15 MR. WHITE: No, sir.

16 THE COURT: All right, folks, time to get this behind
17 you. You've got a lifetime to prove otherwise. All right, good
18 wishes.

19 We're in recess. Thank you.

20 (Recess at 10:50 a.m.)

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CERTIFICATE OF COURT REPORTER

I, Linda C. Marshall, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/

Linda C. Marshall, RPR
Official Court Reporter

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